

RESOLUTION NO. #####**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING CONDITIONAL USE PERMIT NO. UP2012-011, MODIFICATION PERMIT NO. MD2012-011, SITE DEVELOPMENT REVIEW NO. SD2012-001, TENTATIVE TRACT MAP NO. NT2012-001, AND VARIANCE NO. VA2012-002 FOR THE CONSTRUCTION OF A 2,160-SQUARE-FOOT COMMERCIAL OFFICE ADDITION AND SIX DWELLING UNITS LOCATED AT 3900 AND 3928 EAST COAST HIGHWAY (PA2010-061)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Marcelo E. Lische, the architect representing property owner, Magdi Hanna, with respect to property located at 3900 and 3928 East Coast Highway, and legally described as Lots 54, 55, 56, 57, 58, and portions of abandoned alley, Block B, Tract No. 673 requesting approval of a site development review, conditional use permit, modification permit, tentative tract map, and variance.
2. The project includes a horizontal mixed-use development with six detached dwelling units above a common subterranean parking structure, a 2,160-square-foot office addition above an existing 535-square-foot delicatessen (Gallo's Deli), and a 10-space shared, surface parking lot. The following approvals are requested or required in order to implement the project as proposed:
 - a. A site development review to ensure compatibility with the site and surrounding land uses.
 - b. A conditional use permit to allow parking for nonresidential uses in a residential zoning district and to allow off-site parking.
 - c. A modification permit to allow a retaining wall up to 17 feet 2 inches in height, where the Zoning Code limits the height to 8 feet.
 - d. A variance for the residential structures to establish a 15-foot front setback and corresponding buildable area, where a 20-foot setback is currently required.
 - e. A tentative tract map for condominium purposes and to consolidate five lots and portions of a vacated alley into two lots.
3. The subject property at 3900 East Coast Highway is located within the Commercial Corridor (CC) Zoning District and the General Plan Land Use Element category is Corridor Commercial (CC).

4. The subject property at 3928 East Coast Highway is located within the Multiple Residential (RM) Zoning District and the General Plan Land Use Element category is Multiple-Unit Residential (RM).
5. The subject properties are not located within the coastal zone.
6. A public hearing was held on December 6, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 32 (Infill Development Projects). This exemption applies to in-fill development projects in urban areas that are consistent with the General Plan and applicable development standards. In addition, the proposed development must occur on a site of no more than five acres, have no value as habitat for endangered, rare or threatened species, be adequately served by all utilities and public services, and must not result in any significant effects relating to traffic, air quality, water quality, or any other significant effect on the environment due to an unusual circumstance.
2. An analysis and exemption determination was prepared for this project. CEQA Class 32 consists of projects characterized as in-fill development meeting the conditions described above. The proposed project consists of the development of new commercial office space with required off-street parking and six detached dwelling units and is consistent with the City's General Plan land use designations (Corridor Commercial and Multiple Residential) and zoning designations. Potential development of the project site was considered and analyzed in the City's 2006 General Plan EIR for potential environmental impacts. Based on that analysis, there is no reasonable probability that the proposed project will have a significant effect on the environment due to unusual circumstances, nor will the project result in any short-term or long-term impacts that were not previously considered in the Newport Beach General Plan and General Plan EIR. Implementation of the proposed project will not result in any adverse effects on sensitive biological resources, traffic, air quality, noise or water quality. The project site does not exceed five acres in area, is located in an urban area, and can be adequately served by all required utilities and public services. Therefore, the proposed project meets all of the conditions described above for in-fill development and qualifies for a Class 32 exemption.

SECTION 3. REQUIRED FINDINGS.

Site Development Review

1. A site development review is required for the construction of five or more residential units processed in conjunction with a tentative tract map. Also, because the proposed project is essentially a mixed-use development with horizontal inter-mixing of residential and commercial uses and a shared parking lot, the site development review analyzes the project as a whole for compatibility with the site and surrounding land uses. In accordance with Section 20.52.080 (Site Development Review) of the Zoning Code, the Planning Commission must also make the following findings for approval of a site development review:

Finding:

- A. *Allowed within the subject zoning district;*

Facts in Support of Finding:

- A-1. The zoning designation for the commercial component at 3900 East Coast Highway is Commercial Corridor (CC), which is intended to provide for areas appropriate for a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. A commercial building with retail, office, and restaurant uses are permitted uses for the commercial component of the proposed project at 3900 East Coast Highway. The existing food use (Gallo's Deli) was previously permitted through Specialty Food Permit No. 38 and would continue operating under said permit.
- A-2. The zoning designation for the residential component at 3928 East Coast Highway is Multiple Residential (RM, 8 DU), which is intended to provide for areas appropriate for multi-unit residential developments containing attached or detached dwelling units. The site is limited to a maximum of eight dwelling units. The proposed project consists of the development of six detached dwelling units, which is consistent with the zoning designation of the site.
- A-3. The subject property is not part of a specific plan area.

Finding:

- B. *In compliance with all of the applicable criteria [below]:*
 - a. *Compliance with this Section, the General Plan, this Zoning Code, any applicable specific plan, and other applicable criteria and policies related to the use or structure;*
 - b. *The efficient arrangement of structures on the site and the harmonious relationship of the structures to one another and to other adjacent*

development; and whether the relationship is based on standards of good design;

- c. The compatibility in terms of bulk, scale, and aesthetic treatment of structures on the site and adjacent developments and public areas;*
- d. The adequacy, efficiency, and safety of pedestrian and vehicular access, including drive aisles, driveways, and parking and loading spaces;*
- e. The adequacy and efficiency of landscaping and open space areas and the use of water efficient plant and irrigation materials; and*
- f. The protection of significant views from public right(s)-of-way and compliance with Section 20.30.100 (Public View Protections); and*

Facts in Support of Finding:

- Ba-1. The proposed detached residential condominiums are permitted uses within the RM General Plan land use designation and zoning district. The commercial component of the project would consist of a general office and food use, which are permitted uses within the CC General Plan land use designation and zoning district. The food use is an existing use which would continue operating under Specialty Food Permit No. 38.
- Ba-2. As required by the Zoning Code, a conditional use permit has been requested for the off-site parking arrangement on the residential lot, a variance has been requested to establish a 15-foot front setback for the purposes of setbacks and buildable area for the residential component, and modification permit has been requested to allow for the proposed height of the retaining wall.
- Ba-3. The size, density and character of the proposed residential dwelling units complement the existing land uses in the project area and include design elements consistent with Land Use Element Policy 5.1.9 (Character and Quality of Multi-Family Residential) that requires multi-family dwellings to be designed to convey a high quality architectural character. Consistent with this policy, the architectural treatment of the building includes high quality finishes and modulation of mass to convey the character of separate living units and avoiding the appearance of a singular building volume. The roofs have been design with inverted sloping planes to provide visual interest. Significant private open space would also be provided in the form of large balconies and yard area, and further complemented with additional common recreational open space area to provide a pleasant living environment with opportunities for recreation.
- Ba-4. The General Plan also includes Policy LU 6.20.1 that encourages neighborhood serving uses that complement existing development. Policy 6.20.3 encourages the redevelopment of residential parcels immediately adjoining commercial

uses that front onto Coast Highway for surface parking. The proposed project requests a shared parking arrangement that is consistent with the policy overview for the Corona Del Mar corridor.

- Bb-1. The residential and commercial components of the project are integrated as a unified development through the use of similar architectural style and design elements, shared use of parking, and internal pedestrian connectivity.
- Bb-2. The proposed office addition above the existing food use has been designed to improve the aesthetics of the site and improve the commercial presence and interface on East Coast Highway.
- Bb-3. Due to the approximately 17-foot grade differential of the project site and the existing residential property to the rear at 408 Hazel Drive and 10-foot 7-inch separation from the commercial addition to the residential property line, the residential property will not be negatively impacted by the project and will maintain increased privacy and open space.
- Bb-4. Consistent with General Plan Policy LU 6.20.3 and Policy Overview for Corona del Mar, to facilitate redevelopment of the commercial lot, parking spaces required for the office addition would primarily be accommodated on the adjacent residential lot. The parking spaces would also serve as an area for guest parking for the residential development. This shared parking arrangement provides flexibility to accommodate the varying peak parking demands of the commercial and residential uses, efficiently utilizes the site to maximize the number of spaces that can be provided on-site, and serves as a buffer between the proposed residential units and expanded commercial building.
- Bb-5. The residential component of the project has been designed as six detached units above grade, minimizing the bulk and mass of the project and provides for increased open space, light, and air for each unit. Below grade, the project has been designed to efficiently accommodate private garages and guest parking within a single subterranean parking structure.
- Bb-6. The mechanical equipment enclosure for the commercial building has been located approximately 29 feet away from the adjacent residential lot to the rear and approximately 57 feet from the proposed residential units to the west to reduce noise impacts, and would be screened within an equipment enclosure.
- Bb-7. Both the commercial and residential components of the project provide separate and well-defined entries.
- Bc-1. The unified design theme of the commercial and residential component of the project provides for an architectural transition between the residential uses that front East Coast Highway to the east and the commercial corridor that begins to the west.

- Bc-2. The height and bulk of the proposed commercial building are consistent in scale with the commercial building to the west that has roof top parking. The commercial building would also be setback 10 feet 7 inches to the existing residential property line located to the rear and due to the difference in grade (approx. 17 feet), the visual bulk of the building would be minimized when viewed from above.
- Bc-3. The proposed commercial building fronts East Coast Highway, thereby implementing the General Plan policies to foster pedestrian activity with the Corona del Mar commercial corridor.
- Bc-4. The front façade of the commercial building includes both vertical and horizontal off-sets and utilizes a variation of building materials to provide enhanced visual relief.
- Bc-5. The proposed residential units have been designed with horizontal off-sets and variation in roof heights to provide visual interest. In addition, the massing of the units is broken up by the varying building separation.
- Bc-6. The height, bulk, and scale of the residential units are consistent with the adjacent residential condominium complex to the east.
- Bc-7. The shared surface parking lot provides a buffer between the proposed commercial and residential uses and is designed to maintain privacy for the residential tenants and protection from vehicular impacts.
- Bd-1. The project would consolidate the three existing driveways along East Coast Highway into two driveways, thereby reducing potential conflicts and increasing vehicular safety.
- Bd-2. The consolidation of driveways also increases the number of on-street parking spaces along the project frontage from two spaces to a total of five spaces (three new spaces).
- Bd-3. The residential component includes separate and independent access via the easterly driveway into a subterranean parking structure. Furthermore, each residential unit would be afforded a private enclosed garage with direct interior access to their units.
- Bd-4. The project results in a total peak parking requirement of 24 surface spaces (nine spaces for the commercial office floor area, 12 residential parking spaces, and three residential guest parking spaces), which can be provided entirely on-site within the 14-space subterranean parking lot and the 10 space surface parking lot.

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- Bd-5. The existing specialty food use was approved Specialty Food Permit No. 38 without any required parking and will continue to operate as a vested land use right.
- Bd-6. The 10-space surface parking lot would be accessed via the westerly driveway and would accommodate parking for the commercial uses and guests of the residential units. The shared parking arrangement allows for flexibility for use of the parking spaces during the varying peak parking demands of the commercial and residential uses.
- Bd-7. The proposed surface parking lot has been designed to accommodate and provide safe access for emergency, delivery, and refuse collections vehicles, as determined by the City Traffic Engineer.
- Bd-8. The project provides adequate sight distance at each driveway, as determined by the City Traffic Engineer.
- Bd-9. The project would include enhanced pedestrian walkways that provide access between the various uses and within the project site, and to the surrounding public sidewalks and uses.
- Be-1. The residential component includes the enhanced use of landscaping, including a variation of ornamental groundcover, vines, shrubs, and trees, to help soften and buffer the massing of the condominium units from the commercial uses to the west, residential uses to east, and from East Coast Highway.
- Be-2. The shared parking lot complies with the landscape parking lot requirements of Newport Beach Municipal Code (NBMC) Sec. 20.40.070.D.3 (Landscaping) and includes adequate and effective use of ground cover, hedges, and shade trees. The parking lot is also screened from East Coast Highway by a 5-foot-wide planter.
- Be-3. A six-foot-high block wall and row of columnar trees would be provided between the residential units and the shared parking to provide a screening buffer.
- Be-4. The project is subject to the City's Water Efficient Landscape Ordinance (Chapter 14.17 of NBMC).
- Be-5. The relocated outdoor dining area of the existing food use will be better defined for compliance with the condition of Specialty Food Permit No. 38 through the use of planter boxes, which will also improve the appearance of the site.
- Be-6. The proposed residential development includes a large common outdoor living area of 533 square feet that includes a spa and barbeque area. In addition, each unit is afforded private outdoor living space in the form of large balconies and/or private yard areas.

- Bf-1. The portion of East Coast Highway, on which the project is located, is not a designated coastal view road and is not considered a public view corridor.

Finding:

- C. *The proposed development is not detrimental to the harmonious and orderly growth of the City, or endanger jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed development.*

Facts in Support of Finding:

- C-1. The project has been conditioned to ensure that potential conflicts with surrounding land uses are minimized to the extent possible to maintain a healthy environment for both businesses and residents.
- C-2. The project's trash enclosure would be shared between the residential and commercial component, and would be located at the rear of the commercial lot. The size, design, location, and screening of the refuse enclosure comply with the requirements of NBMC Sec. 20.30.120 ensuring compatibility with the on-site and adjacent uses. Adequate access to refuse containers would be provided through the shared parking lot and noise and visual impacts to the adjacent residential use to the rear would be minimized due to the retaining wall, differences in grade, and landscaping.
- C-3. The project is subject to the City's Outdoor Lighting requirements contained with Section 20.30.070 of the Zoning Code.
- C-4. The relocated 125-square-foot outdoor dining area of the existing food use would be covered by the office addition above and would be screened and noise attenuated from the existing adjacent residential use to the rear due to the difference in grade.
- C-5. The specialty food use and the proposed general office would not maintain late hours as defined by the Zoning Code to be later than 11:00 p.m.
- C-6. Roof-top mechanical equipment would be fully enclosed within an equipment screen and would not be visible from the residences above. The rooftop mechanical equipment enclosure has been located at the center of the commercial building to minimize the bulk of the building as viewed from East Coast Highway.
- C-7. Tenant improvements to the new commercial component of the development will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

Conditional Use Permit – General Findings

2. A conditional use permit is requested to allow off-site parking for the commercial development at 3900 East Coast Highway to be located on the adjacent residential property at 3928 East Coast Highway. In accordance with Section 20.52.020.F (Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a conditional use permit are set forth:

Finding

- A. *The use is consistent with the General Plan and any applicable specific plan:*

Facts in Support of Finding

- A-1. The proposed detached residential condominiums are consistent with the RM General Plan Land Use Element designation.
- A-2. The proposed general office and food uses within the commercial component are consistent with the CC General Plan land use designation.
- A-3. Land Use Policy LU6.20.3 (Expanded Parking) for Corona Del Mar seeks to accommodate the redevelopment of residential parcels immediately adjoining commercial uses that front onto Coast Highway for surface parking, provided that adequate buffers are incorporated to prevent impacts on adjoining residential uses. The proposed project requests a shared parking orientation that is consistent with the policy overview for the Corona Del Mar corridor. Adequate walls and landscape buffers will be provided to clearly delineate the change of uses along the Coast Highway frontage.
- A-4. The subject properties are not part of a specific plan area.

Finding

- B. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code:*

Facts in Support of Finding

- B-1. The proposed detached residential condominiums are permitted uses within the RM zoning district.
- B-2. The proposed general office and food uses within the commercial component are consistent with the CC zoning district.

- B-3. The required number of parking spaces to accommodate the new commercial development will be provided in a shared parking situation across the commercial property and the adjacent residential property at 3928 East Coast Highway. The proposed parking lot complies with the requirements as provided in Section 20.40.080 (Parking for Nonresidential Uses in Residential Zoning Districts), which requires the parking area to be designed to be compatible with and to not fragment the adjacent neighborhood, located within a reasonable walking distance to the use it is intended to serve, and to not be detrimental or injurious to property and improvements in the neighborhood.

Finding

- C. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity:*

Facts in Support of Finding

- C-1. All of the required parking for the additional commercial development would be provided within close proximity and in an accessible manner for patrons at 3900 East Coast Highway.
- C-3. The shared parking lot is primarily intended to serve the parking demands of the proposed commercial office floor area; however, parking will be unrestricted so as to allow for shared parking with the existing food use and guest parking for the residential components.
- C-4. The residential users will have direct access to the commercial site and parking lot through a secured gate, but would be adequately buffered from the parking lot activity by solid 6-foot-high block walls, landscaping buffers, and minimal windows designed facing the parking lot.
- C-5. The project has been reviewed and found to be compliant with the parking area requirements and landscaping standards as provided in Section 20.40.070 (Development Standards for Parking Areas) and the outdoor lighting standards in Section 20.30.070 (Outdoor Lighting).

Finding

- D. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities:*

Facts in Support of Finding

- D-1. The proposed parking lot provides adequate vehicle circulation and parking spaces for patrons.

- D-2. Adequate public and emergency vehicle access, public services, and utilities are provided.
- D-3. The development of the project site will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

Finding

- E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, a safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding

- E-1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible.
- E-2. The proposed commercial and residential development will serve the surrounding residential and retail community. This will revitalize the project site and provide an economic opportunity for the property owner to improve the visual character of East Coast Highway, a major thoroughfare through Corona Del Mar.

Conditional Use Permit- Additional Findings for Off-Site Parking

3. Pursuant to Section 20.40.100 of the Zoning Code, off-street parking on a separate lot from the project site also requires the approval of a conditional use permit. In addition to the standard conditional use permit findings, approval of off-site parking is subject to specific findings. The following findings and facts in support of such findings are set forth:

Finding

- A. The parking facility is located within a convenient distance to the use it is intended to serve.*

Facts in Support of Finding

- A-1. The off-site parking lot is located immediately adjacent to the subject property is essentially on-site.

Finding

- B On-street parking is not being counted towards meeting parking requirements.*

Facts in Support of Finding

- B-1. The nine parking spaces required to accommodate the additional commercial development are provided entirely within the parking lot.
- B-2. The enhancement of public improvements and parking are identified as an opportunity for change within Land Use Policy LU3.3 of the General Plan. The proposed project would close an existing driveway on 3928 East Coast Highway and provide additional on-street parking available to the public.

Finding

- C *Use of the parking facility will not create undue traffic hazards or impacts in the surrounding area.*

Facts in Support of Finding

- C-1. The Traffic Engineer has reviewed and approved the configuration of the new parking lot extension and proposed changes to the existing parking lot, and has determined that the parking lot design will not create an undue traffic hazard in the surrounding area.
- C-2. The design consolidates three driveways into two driveways, thereby reducing potential conflicts and increasing vehicular safety along East Coast Highway.

Finding

- D *The parking facility will be permanently available, marked, and maintained for the use it is intended to serve.*

Facts in Support of Finding

- D1. Both of the commercial and residential components of the project site are currently owned in common across six legal lots. The proposed tract map would result in two new lots with commercial development on one and the six-unit residential condominiums on the second. As a condition of approval, the homeowner's association for the condominium development and the property owner of the commercial property will be required to enter into a reciprocal parking agreement for the joint use of the 10-space surface parking lot; therefore, the parking facility will remain available, marked, and maintained as intended.

Modification Permit

4. A modification permit is requested to allow construction of a retaining wall at a maximum height of 17 feet 2 inches from the finished grade that is located at the northwesterly corner of the lot located at 3900 East Coast Highway, where the Zoning Code limits the height to 8-feet maximum. An increase in height of a retaining wall may be requested per Section 20.30.040 (Fences, Hedges, Walls, and Retaining Walls) of the Zoning Code. In accordance with Section 20.52.050 (Modification Permits), the Planning Commission must also make the following findings for approval of a modification permit:

Finding:

- A. *The requested modification will be compatible with existing development in the neighborhood.*

Facts in Support of Finding:

- A-1. The view of the new retaining wall from East Coast Highway will be partially shielded by the second floor of the proposed commercial development.
- A-2. To minimize the massing and visual impact of the wall to the on-site users, a planter wall and trash enclosure is proposed to be located in front of the retaining wall and to improve its overall aesthetics.

Finding:

- B. *The granting of the modification is necessary due to the unique physical characteristic(s) of the property and/or structure, and/or characteristics of the use.*

Facts in Support of Finding:

- B-1. The proposed commercial lot is constrained due to size and the steepness of the slope at northwesterly corner of the lot.
- B-2. The commercial lot is currently developed with a food use and the proposed development includes additional commercial office construction that would maximize the development potential identified by the General Plan floor area limit (0.75 FAR). The proposed retaining wall would accommodate the proposed development and make sufficient useable area available to provide required on-site parking for the new commercial office development.

Finding:

- C. *The granting of the modification is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code*

results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.

Facts in Support of Finding:

- C-1. Zoning Code regulations allow retaining walls at a maximum height of 8 feet with a minimum separation requirement of 6 feet between walls. Due to the topography of the project site, the construction of two terraced retaining walls that comply with this standard would result in a significant loss of site area necessary to provide on-site parking, vehicular circulation, and a trash enclosure for the new commercial development

Finding:

- D. *There are no alternatives to the Modification Permit that could provide similar benefits to the applicant with less potential detriment to surrounding owners and occupants, the neighborhood, or to the general public.*

Facts in Support of Finding:

- D-1. Without this approval, the applicant would be required to construct a series of 8-foot retaining walls with a 6-foot separation between walls. This would result in a significant loss of project site area that is necessary to provide required on-site parking for the proposed use.
- D-2. A terraced design that provides the required separation would not be less detrimental to existing residential property located to the rear at 408 Hazel Drive because they would not be able to see the face of the retaining wall from their vantage point due to the grade differential. Also, since the retaining wall is partially screened as viewed from East Coast Highway, the terraced design would not be readily visible from the public.
- D-3. The location of the retaining wall, at the rear of the subject property is appropriate given the proposed retaining wall would be adequately screened from the adjacent right-of-way. The retaining wall will provide a planter wall and trash enclosure in front of it to provide variation and articulation to improve the visual aesthetic of the retaining wall, consistent with the intent of the wall separation requirement.

Finding:

- E. *The granting of the modification would not be detrimental to public health, safety, or welfare to the occupants of the property, nearby properties, the neighborhood, or the City, or result in a change in density or intensity that would be inconsistent with the provisions of this Zoning Code.*

Facts in Support of Finding:

- E-1. The proposed retaining wall would provide a wrought iron guardrail for safety on the higher side of the property on the adjacent commercial and residential properties.
- E-2. The highest point of the retaining wall is near the northwest corner of the lot and is screened by the proposed commercial building as viewed from Coast Highway. Also, the retaining wall drops approximately 8 feet over a distance of 16 feet 6 inches, minimizing the height of the wall as the existing grade drops so that the visual impact of the wall is reduced.
- E-3. The design of the development will not conflict with any easements acquired by the public at large for access through or use of property within the proposed development. The portion of the property at 3900 East Coast Highway where the retaining wall is proposed was previously an alley that has recently been vacated by the City and granted to the property owner of 3900 East Coast Highway.

Variance

- 5. A variance for the residential structures to establish a 15-foot front setback and corresponding buildable area where a 20-foot setback is required. In accordance with Section 20.52.090.F (Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of a variance are set forth:

Finding:

- A. *That there are special or unique circumstances or conditions applicable to the subject property (e.g. location, shape, size, surrounding, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.*

Facts in Support of Finding:

- A-1. The subject property is a wide (approx. 165 feet), but shallow lot (approx. 91 feet). The shallowness of the lot creates a design constraint for developing the site to its maximum allowed density of eight dwelling units, while still providing for required parking, vehicular circulation, open space, and the required setbacks. Due to these constraints, the applicant is only proposing to develop a total of six dwelling units but is requesting the ability to encroach five feet into the front 20-foot setback, similar to other developed RM lots in the vicinity.

- A-2. A 20-foot setback, corresponding buildable area, and resulting floor area limit are not appropriate for this property based on a review of the development pattern of adjacent multi-unit residential developments east of the project site that also front onto East Coast Highway.

Finding:

- B. *That strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.*

Facts in Support of Finding:

- B-1. Immediately to the east of the subject property is a large 18-unit residential condominium complex (401 Seaward Rd.) that maintains a 15-foot front setback adjacent to East Coast Highway and to Seaward Road. This property is located on a one acre lot and is permitted a much larger floor area limit of 1.75 (instead of 1.5).
- B-2. Further east are several RM-6000 zoned lots (4104-4348 Shorecrest Ln.) that also maintain 15-foot front setbacks adjacent to East Coast Highway. These lots are not subject to a floor area limit ratio, but rather are limited to a 60 percent maximum lot coverage requirement.
- B-3. The setbacks and allowed floor area for nearby multi-unit developments are more permissive than what the subject property is limited to. Therefore, strict compliance with the 20-foot front setback and resulting floor area limit would deprive the subject property of privileges enjoyed by nearby RM lots.
- B-4. Granting of the variance would allow the applicant to develop a multi-unit residential development utilizing similar setbacks and to a more reasonable floor area limit consistent with other multi-unit residential developments in the area.

Finding:

- C. *That the granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.*

Facts in Support of Finding:

- C-1. The 18-unit condominium complex to the east is located on a larger one acre lot and is permitted a larger floor area limit of 1.75 times the buildable area (instead of 1.5). If the subject property would were allowed a similar 1.75 floor area limit, the floor area limit would be 14,719 square feet, which is larger than the 13,703 square feet proposed. Also, the RM-6000 zoned lots further east are not subject to a floor area limit ratio, but rather are regulated by a 60 percent

maximum lot coverage requirement. For comparison, the proposed lot coverage of the residential development is only 38 percent. In both these examples of nearby RM lots, the setbacks, buildable area, and total allowed floor areas are more permissive than what the subject property is limited to. Therefore, strict compliance with the 20-foot front setback, buildable area, and resulting floor area limit would deprive the subject property of privileges enjoyed by nearby RM lots.

Finding:

- D. *That the granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.*

Facts in Support of Finding:

- D-1. The size of the proposed residential development would be in scale with nearby multi-unit residential developments located on East Coast Highway and Shorecrest Lane.
- D-2. The granting of the Variance would not constitute a special privilege inconsistent with the limitations upon other properties zoned RM as it allows the property owner to maintain equity with other multiple-unit developments along East Coast Highway.

Finding:

- E. *That the granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.*

Facts in Support of Finding:

- E-1. The five-foot encroachment into the 20-foot setback would not be detrimental to the City or result in a hazard to the existing community or future residents of the project. The project would provide a 15-foot front setback to the street, which is adequate to provide for light, air, privacy and open space, consistent with the intent of the Zoning Code.
- E-2. Trees and shrubs will be planted within the 15-foot front setback to act as a buffer and soften the visual impact along the East Coast Highway frontage.
- E-3. The approval of this Variance is conditioned such that the applicant is required to obtain all necessary permits in accordance with the Building Code and other applicable Codes.

- E-4. The proposed 15-foot setback for the residential structures would be consistent with the development pattern of the multi-unit developments to the east and compatible with the commercial lots to the west which so not have front setback requirements.
- E-5. Of the 1,100 square feet of additional floor area that the applicant is requesting above the maximum floor area limit (based on a buildable area utilizing a 20-foot setback), 1,018 square feet of that floor area is located below grade within the private garage area that is counted towards gross floor area and garage stairs. Therefore, this additional floor area is predominately below grade and does not add significant bulk or mass to the development as compared to what normally be allowed to be developed above grade using the 20-foot setback and resulting floor area limit.

Finding:

- F. Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.*

Facts in Support of Finding:

- F-1. The intent of the front setback is to provide adequate separation for light, air, privacy and open space adjacent to the street. In this case, the project would provide a 15-foot front setback to the street, which is consistent with the front setbacks of the other RM zoned lots east. Fifteen feet is adequate to provide for light, air, privacy and open space, consistent with the intent of the Zoning Code.
- F-2. The subject property is designated RM by the Land Use Element of the General Plan and zoned RM. Both designations are intended primarily for multi-family residential development containing attached or detached dwelling units. The subject property is entitled for the development of eight dwelling units where six are proposed. Approval of the Variance will not affect residential density.
- F-3. The subject property is not located within a specific plan area.
- F-4. The overall design, based upon the proposed plans, meets residential design criteria provided within Section 20.48.180.B.2 (Design Criteria) by avoiding long unarticulated walls and providing architectural treatment of all elevations.

Tentative Tract Map

6. A tentative tract map is requested for residential condominium purposes, to create six airspace condominium units. The map would also serve to consolidate five lots and portions of a vacated alley into two lots. In accordance with Section 19.12.070 (Required Findings for Action on Tentative Maps) of the Newport Beach Municipal Code, the following findings and facts in support of a tentative tract map are set forth:

Finding:

- A. *That the proposed map and the design or improvements of the subdivision are consistent with General Plan and any applicable specific plan, and with the applicable provisions of the Subdivision Map Act and the City Subdivision Code.*

Facts in Support of Finding:

- A-1. The project is consistent with the Commercial Corridor and Multiple Unit Residential General Plan designations of the project site.
- A-2. The Public Works Department has reviewed the proposed tentative map and found it consistent with the Newport Beach Subdivision Code (Title 19) and applicable requirements of the Subdivision Map Act.
- A-3. Conditions of approval have been included to ensure compliance with Title 19.

Finding:

- B. That the site is physically suitable for the type and density of development.

Facts in Support of Finding:

- B-1. The residential portion of the project site is currently a vacant paved/gravel lot and the commercial portion of the project site is currently developed with a 535-square-foot delicatessen.
- B-2. The site where construction will occur is relatively flat and based on the geologic investigation, the site is safe and suitable for development. The subject property has been placed with a significant amount of fill to provide a generally level site perched above the neighboring descending ravine. The fills encountered appear to be dense and compacted to acceptable levels. Expansive soils were encountered and the soils report recommends special attention be given to the project design and maintenance in compliance with Expansive Soil Guidelines.
- B-3. A preliminary Acoustical Study prepared for the project estimates that future traffic noise exposure will be 72.5 dB CNEL to the nearest facades to East Coast Highway. All multi-family projects must comply with the State of California's noise standards that specify that the intrusion of noise from exterior sources (such as traffic) shall not exceed a CNEL of 45 dB within the interior of any habitable space. This is also consistent with the City's interior noise standards established in the General Plan Noise Element, including Policy N1.1, N1.2, and N1.5. The Acoustical Study concludes that with appropriate noise control measures incorporated into the design of the proposed project (e.g., ventilation and air conditioning, weather stripping, increased sound-rated doors, windows, and wall finishes, etc.), no significant noise impacts will occur

and the interior noise levels would comply with the City and State interior noise standard of 45 dB CNEL for residential units.

Finding:

- C. *That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision-making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.*

Facts in Support of Finding:

- C-1. The portion of the project site to be developed does not support any environmental resources as indicated in the jurisdictional delineation prepared for the project. The project would not require discharge of fill into areas subject to Army Corp of Engineers, California Department of Fish and Game, or California Coastal Commission jurisdiction within the Buck Gully drainage. As such, there would be no significant impacts to the Buck Gully drainage associated with the project.
- C-2. Portions of the Buck Gully drainage are within areas that could be potentially affected by fuel modification activities, including cutting of vegetation. The jurisdictional delineation concludes that alkali bulrush and southern cattail are growing in the stream channel and account for minimal biomass and would not likely require removal or thinning, as they pose no fire risk or threat. As such, there would be no impacts to wetland vegetation associated with the project.

Finding:

- D. *That the design of the subdivision or the type of improvements is not likely to cause serious public health problems.*

Facts in Support of Finding:

- D-1. The project consists of six residential units and commercial development at 0.75 floor area ratio as allowed by the Zoning Code and the General Plan.
- D-2. No evidence is known to exist that would indicate that the planned subdivision pattern will generate any serious public health problems.
- D-3. All construction for the project will comply with Building, Public Works, and Fire Codes. Public improvements will be required of the developer per Section

19.28.10 of the Municipal Code and Section 66411 of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.

Finding:

- E. *That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the decision-making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.*

Facts in Support of Finding:

- E-1. ~~That-t~~ The design of the development will not conflict with any easements acquired by the public at large for access through or use of property within the proposed development.
- E-2. ~~That-Pp~~ Public improvements will be required of the applicant per the Municipal Code and the Subdivision Map Act.
- E-3. An existing 7.5-foot-wide utilities easement at the rear of the two lots will be retained. An approximately 15-foot-wide access and utilities easement located along the eastern side of the residential lot that is no longer needed would be vacated. An existing slope and drainage easement over the southeasterly corner of the residential lot would also be vacated and replaced with a new variable width storm drain easement. Southern California Edison power lines running in the rear of the property will be re-routed and placed underground.

Finding:

- F. *That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.*

Facts in Support of Finding:

- F-1. The site is not subject to a Williamson Act contract.

Finding:

- G. *That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (a) there is an adopted specific plan for the area to be included within the land project; and (b) the decision-making body finds that the proposed land project is consistent with the specific plan for the area.*

Facts in Support of Finding:

- G-1. The subject property is not located within the boundaries of a specific plan.

Finding:

- H. *That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.*

Facts in Support of Finding:

- H-1. Title 24 of the Uniform Building Code requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate.
- H-2. The Newport Beach Building Division will enforce Title 24 compliance through the plan check and field inspection processes for the construction of any future proposed residences.

Finding:

- I. *That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City's residents and available fiscal and environmental resources.*

Facts in Support of Finding:

- I-1. There are no existing dwelling units on the project site. Rather the proposed project includes the construction of six new condominium units to contribute to the City's share of the regional housing need. The applicant will be responsible for the payment of appropriate fair share, park, and housing in-lieu fees for the development of these new dwelling units.

Finding:

- J. *That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.*

Facts in Support of Finding:

- J-1. Waste discharge will be directed into the existing sewer system and will not violate Regional Water Quality Control Board (RWQCB) requirements.
- J-2. Sewer connections have been conditioned to be installed per City Standards, the applicable provisions of Chapter 14.24 (Sewer Connection, Permits), and the latest revision of the Uniform Plumbing Code.

Finding:

- K. *For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.*

Facts in Support of Finding:

- K-1. The project site is not located within the Coastal Zone.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby approves Site Development Review No. SD2012-001, Conditional Use Permit No. UP2012-011, Modification Permit No. MD2012-011, Variance No. VA2012-002, and Tentative Tract Map No. NT2012-001(PA2012-061) subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This Site Development Review, Conditional Use Permit, Modification Permit, and Variance actions shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.
3. This Tentative Tract Map action shall become final and effective ten days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk~~Director of Community Development~~ in accordance with the provisions of Title 19 Subdivisions, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 6TH DAY OF DECEMBER, 2012.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Michael Toerge, Chairman

BY: _____
Fred Ameri, Secretary

EXHIBIT "A"**CONDITIONS OF APPROVAL****PLANNING**

1. The development shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. Site Development Review No. SD2012-001, Conditional Use Permit No. UP2012-011, Modification Permit No. MD2012-011, and Variance No. VA2012-002 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
3. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
4. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of Site Development Review No. SD2012-001, Conditional Use Permit No. UP2012-011, Modification Permit No. MD2012-011, and Variance No. VA2012-002.
5. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
6. Prior to the issuance of building permits, Fair Share Traffic Fees shall be paid for the new dwelling units and commercial floor area in accordance with Chapter 15.38 of the Newport Beach Municipal Code.
7. Prior to issuance of building permits, an in-lieu housing fee for six dwelling units (currently \$20,513.00 per new additional dwelling unit) shall be paid in ~~accordance~~ accordance with City Council Resolution No. 2010-44 of the Newport Beach Municipal Code.
8. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner, or the leasing agent.
9. This approval may be modified or revoked by the Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.

10. The existing food use shall continue operating in compliance with the conditions of approval of Specialty Food Permit No. 38. Any intensification of use shall require the application of a new conditional or minor use permit.
11. The existing power poles and overhead power lines located at the rear of the property shall be removed and the power lines shall be undergrounded.
12. Flat roof portions of the commercial building shall be constructed to meet "cool roofs" standards for energy efficiency; however, the color and material shall not result in glare as viewed from the ~~residents~~ residences above. No mechanical equipment shall be permitted on the roof, except within the designated mechanical well and shall not be visible from East Coast Highway or the adjacent residential properties.
13. The floor plans and building envelopes for each residential unit are approved as precise plans, unless revisions are approved by the Community Development Director. Future floor area additions to the building envelopes shall be prohibited. The proposed open patio and deck areas for each unit shall not be permitted to be enclosed and the landscape and common open space areas proposed throughout the development site shall be preserved.
14. A total of 10 parking spaces shall be provided within the shared parking lot as illustrated on the approved plans and shall be available for use by guests s of the residential tenants and commercial tenants and customers.
15. All employees of the commercial building are required to park on site.
16. The shared 10-space parking lot shall be used for the parking of passenger vehicles only, with the exception of temporary parking for the loading and unloading of commercial and residential delivery trucks.
17. Commercial overnight parking within the shared 10-space parking lot shall be prohibited. Residential guest parking overnight is permitted.
18. The future homeowner's association for the condominium development and the property owner of the commercial property shall enter into a reciprocal parking and access agreement for the joint use of the 10-space surface parking lot ensuring the permanently availability of parking. The agreement, approved as to form by the City Attorney's Office, shall be recorded prior to the issuance of the Certificate of Occupancy or final of building permits.
19. No signs, other than signs designating entrances, exits, and conditions of use shall be maintained in the shared parking lot. Signs shall not exceed four square feet in area and five feet in height. The number and location shall be approved by the Community Development Director before installation.

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20. Prior to the issuance of building permits, documents/plans shall be submitted demonstrating compliance with the requirements of Chapter 14.17 (Water-Efficient Landscaping Ordinance) of the Municipal Code.
 21. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
 22. Prior to the issuance of a building permits, the applicant shall submit a landscape and irrigation plan prepared by a licensed landscape architect. These plans shall incorporate drought tolerant plantings and water efficient irrigation practices, and the plans shall be approved by the Planning Division and the Municipal Operations Department. All planting areas shall be provided with a permanent underground automatic sprinkler irrigation system of a design suitable for the type and arrangement of the plant materials selected. The irrigation system shall be adjustable based upon either a signal from a satellite or an on-site moisture-sensor. Planting areas adjacent to vehicular activity shall be protected by a continuous concrete curb or similar permanent barrier. Landscaping shall be located so as not to impede vehicular sight distance to the satisfaction of the Traffic Engineer.
 23. Prior to the final of building permits, the applicant shall schedule an inspection by the Planning Division to confirm that all landscaping was installed in accordance with the approved landscape plan
 24. Water leaving the project site due to over-irrigation of landscape shall be minimized. If an incident such as this is reported, a representative from the Code and Water Quality Enforcement Division shall visit the location, investigate, inform and notice the responsible party, and, as appropriate, cite the responsible party and/or shut off the irrigation water.
 25. Water should not be used to clean paved surfaces such as sidewalks, driveways, parking areas, etc. except to alleviate immediate safety or sanitation hazards
 26. Prior to the issuance of building permits, the applicant shall prepare photometric study in conjunction with a final lighting plan for approval by the Planning Division. The survey shall show that lighting values are ~~one-foot-candle~~^{"1"} or less at all property lines. Higher lighting levels are subject to the review and approval of the Community Development Director where it can be shown to be in compliance with the purpose and intent of the Outdoor Lighting section of the Zoning Code.
 27. Prior to issuance of the certificate of occupancy or final of building permits, the applicant shall schedule an evening inspection by the Code and Water Quality Enforcement Division to confirm control of light and glare.

28. All trash shall be stored within the buildings s or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
29. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
30. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way
31. Prior to the issuance of the certificate of occupancy or final of building permits of the residential units, the future homeowners association shall enter into an agreement with the property owner of the commercial property to allow the use of the trash enclosure and to establish the terms of use and refuse collection.
32. The exterior of the businesses shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
33. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Community Development Director, and may require an amendment to the Conditional Use Permit.
34. No outside paging system shall be utilized in conjunction with this development.
35. The operator of the commercial building shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by tenants, patrons, food service operations, and mechanical equipment. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code.
- ~~36. Storage outside of the buildings in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.~~
- ~~37.~~ 36. Kitchen exhaust fans shall be installed/maintained in accordance with the Uniform Mechanical Code. The issues with regard to the control of smoke and odor shall be directed to the South Coast Air Quality Management District
- ~~38.~~ 37. All exits shall remain free of obstructions and available for ingress and egress at all times.

- ~~39-38.~~ No building permits may be issued until the appeal period has expired, unless otherwise approved by the Planning Division. Building permits for structures located across the existing property lines shall not be issued until the tract map has been recorded.
- ~~40-39.~~ A copy of these conditions of approval shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
- ~~41-40.~~ To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Plaza Corona Del Mar including, but not limited to, the Conditional Use Permit No. UP2012-011, Modification Permit No. MD2012-011, Site Development Review No. SD2012-001, Tentative Tract Map No. NT2012-001, and Variance No. VA2012-002 (PA2012-061). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Fire Department Conditions

- ~~42-41.~~ Fire flow shall be provided in accordance with N.B.F.D. Guideline B.01 "Determination of Required Fire Flow." The fire flow will determine the number of fire hydrants required for the project.
- ~~43-42.~~ Structures shall meet the requirements of Chapter 7A of the California Building Code, as amended by the City of Newport Beach.
- ~~44-43.~~ New and existing structures in the project will be required to have fire sprinklers. The sprinkler system shall be monitored by a UL certified alarm service company.
- ~~45-44.~~ The end of the drive aisle of the shared parking lot shall be identified as a fire lane and marked as per N.B.F.D. Guideline C.01.
- ~~46-45.~~ Trash enclosures shall be located at least five feet from structures, unless, fire sprinklers are provided in the trash enclosure/structure.
- ~~47-46.~~ A fuel modification plan shall be required for all landscape and must be submitted to the Fire Department. All requirements from N.B.F.D. Guideline G.02 "Fuel Modification

Plans and Maintenance Standard” must be met. As per Guideline G.02. tree species are not allowed within 10 feet of combustible structures.

Building Division Conditions

- | ~~48.47.~~ The applicant is required to obtain all applicable permits from the City’s Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. The proposed residential dwelling units do not meet the definition of “townhouse” per CBC 202.
- | ~~49.48.~~ Full access compliance shall be demonstrated and provided in accordance with the February 8, 2012, Building Division letter, CBC 11A and CBC 11B at the time of permit application. The floor and seating plans submitted with the Project Review plans are for reference only. Subsequent plan changes may be required due to code changes prior to submittal for plan review and permitting. This project review does not constitute approval of the floor plans, parking, or other access compliance issues.
- | ~~50.49.~~ All sides of both the commercial and residential structures shall fully comply with the Special Fire Protection Area requirements at the time of permit submittal. These requirements may be found in CBC 7A, Newport Beach Municipal Code and related codes.
- | ~~51.50.~~ Prior to the issuance of building permits, a preliminary plan review meeting shall be scheduled with the Building Division.
- | ~~52.51.~~ The applicant shall employ the following best available control measures (“BACMs”) to reduce construction-related air quality impacts:

Dust Control

- Water all active construction areas at least twice daily.
- Cover all haul trucks or maintain at least two feet of freeboard.
- Pave or apply water four times daily to all unpaved parking or staging areas.
- Sweep or wash any site access points within two hours of any visible dirt deposits on any public roadway.
- Cover or water twice daily any on-site stockpiles of debris, dirt or other dusty material.
- Suspend all operations on any unpaved surface if winds exceed 25 mph.

Emissions

- Require 90-day low-NOx tune-ups for off road equipment.
- Limit allowable idling to ~~30~~five minutes for trucks and heavy equipment

Off-Site Impacts

- Encourage car pooling for construction workers.
- Limit lane closures to off-peak travel periods.
- Park construction vehicles off traveled roadways.
- Wet down or cover dirt hauled off-site.

- Sweep access points daily.
- Encourage receipt of materials during non-peak traffic hours.
- Sandbag construction sites for erosion control.

Fill Placement

- The number and type of equipment for dirt pushing will be limited on any day to ensure that SCAQMD significance thresholds are not exceeded.
- Maintain and utilize a continuous water application system during earth placement and compaction to achieve a 10 percent soil moisture content in the top six-inch surface layer, subject to review/discretion of the geotechnical engineer.

~~53.52.~~ Prior to issuance of grading permits, the applicant shall prepare and submit a Water Quality Management Plan (WQMP) for the proposed project, subject to the approval of the Building Division and Code and Water Quality Enforcement Division. The WQMP shall provide appropriate Best Management Practices (BMPs) to ensure that no violations of water quality standards or waste discharge requirements occur.

~~54.53.~~ A list of “good house-keeping” practices will be incorporated into the long-term post-construction operation of the site to minimize the likelihood that pollutants will be used, stored or spilled on the site that could impair water quality. These may include frequent parking area vacuum truck sweeping, removal of wastes or spills, limited use of harmful fertilizers or pesticides, and the diversion of storm water away from potential sources of pollution (e.g., trash receptacles and parking structures). The Stage 2 WQMP shall list and describe all structural and non-structural BMPs. In addition, the WQMP must also identify the entity responsible for the long-term inspection, maintenance, and funding for all structural (and if applicable Treatment Control) BMPs.

~~55.54.~~ The construction and equipment staging area shall be located in the least visually prominent area on the site, or another site approved by the Community Development Director, and shall be properly maintained and/or screened to minimize potential unsightly conditions.

~~56.55.~~ A six-foot-high screen and security fence shall be placed around the construction site during construction.

~~57.56.~~ Construction equipment and materials shall be properly stored on the site when not in use.

Public Works Conditions

~~58.57.~~ An encroachment permit is required for all work activities with the public right-of-way.

~~59.58.~~ The parking lot layout shall comply with City Standard F#805-L-A&B and shall be approved by the Public Works Department prior to the issuance of building permits.

~~60.59.~~ All improvements adjacent to the proposed driveway approaches shall comply with the City’s sight distance requirement, City Standard 110-L.

- ~~61-60.~~ In case of damage done to existing public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.
- ~~62-61.~~ County Sanitation District fees shall be paid prior to the issuance of any building permits.
- ~~63-62.~~ Prior to commencement of demolition and grading of the project, the applicant shall submit a construction management and delivery plan to be reviewed and approved by the Public Works Department. The plan shall include discussion of project phasing; parking arrangements for both sites during construction; anticipated haul routes and construction mitigation. Upon approval of the plan, the applicant shall be responsible for implementing and complying with the stipulations set forth in the approved plan.
- ~~64-63.~~ Traffic control and truck route plans shall be reviewed and approved by the Public Works Department before their implementation. Large construction vehicles shall not be permitted to travel narrow streets as determined by the Public Works Department. Disruption caused by construction work along roadways and by movement of construction vehicles shall be minimized by proper use of traffic control equipment and flagman.
- ~~65-64.~~ Each unit shall have a dedicated water service installed per STD-502-L or STD-503-L, depending on the size.
- ~~66-65.~~ New and existing fire services, when required by Fire Department shall be protected by a City approved double check detector assembly and installed per STD-517-L.
- ~~67-66.~~ New and existing commercial water meter(s) shall be protected by a City approved reduced pressure backflow assembly and installed per STD-520_L-A.
- ~~68-67.~~ Landscaping lines shall have a dedicated meter and shall be protected by a dedicated City approved reduced pressure backflow assembly per STD-520-L-A.
- ~~69-68.~~ The proposed driveway to the underground parking garage shall have a maximum slope of 15 percent and a maximum change of grade of 11 percent per City Standard #160-L-C.
- ~~70-69.~~ Prior to the issuance of a Certificate of Occupancy for the proposed structures, all public improvements shall be constructed as required by Ordinance and these conditions of approval.

Tract Map Conditions

- ~~71-70.~~ A Final Tract Map shall be recorded. The Map shall be prepared on the California coordinate system (NAD83). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach,

a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.

- | ~~72.71.~~ Prior to recordation of the Final Tract Map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set on each corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
- | ~~73.72.~~ Prior to recordation of the Final Tract Map, the applicant shall provide a bond/surety in order to guarantee completion of all required public improvements. The bond/surety shall be reviewed and approved by the Public Works Department.
- | ~~74.73.~~ The existing concrete curb, gutter, and sidewalk along the East Coast Highway frontage shall be reconstructed, per City Standards.
- | ~~75.74.~~ The unused driveway approaches shall be abandoned and reconstructed with full height curb, gutter, and sidewalk per City Standard #165-L.
- | ~~76.75.~~ Proposed driveway approaches shall be constructed per City Standard #162-L.
- | ~~77.76.~~ The proposed storm drain relocation shall be subject to review and approval by the Public Works Department.
- | ~~78.77.~~ A variable width storm drain easement measured 5-feet from the westerly side of the centerline of the proposed new storm drain location to the easterly property line shall be granted to the City.
- | ~~79.78.~~ New 36-inch box street trees will be required to be planted on East Coast Highway. The designated street tree for this segment of East Coast Highway is the King Palm (Archontophoenix Cunningham). The number and location of these street trees are subject to approval by the Public Works Department and the Parks and Trees Division of the Municipal Operations Department.
- | ~~80.79.~~ Prior to or concurrently with the recordation of the Final Tract Map, an approximately 15-foot wide access and utilities easement through the site adjacent to the eastern property line of 3928 East Coast Highway shall be vacated.
- | ~~81.80.~~ Prior to or concurrently with the recordation of the Final Tract Map, an existing slope and drainage easement at the southeast portion of the subject property will be realigned so that it will not conflict with the location of proposed structures.

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- ~~82.81.~~ Applicant is responsible for all upgrades to the City's utilities as required to fulfill the project's demand; a new 8-inch VCP sewer main shall be installed from the manhole at the Seaward Road/Coast Highway Intersection to the property's frontage. A new sewer main terminal cleanout shall be installed at the end of the new 8-inch BCP main per STD-400-L. Each unit shall have a dedicated sewer lateral with cleanouts installed per STD-406-L.
- ~~83.82.~~ Prior to the recordation of the Final Tract Map, a park dedication fee for six dwelling units (currently \$26,125.00 per new additional dwelling unit) shall be paid in accordance with Chapter 19.52 of the Newport Beach Municipal Code. This fee shall be paid upon submittal of the map to the Public Works Department for plan check and deposited into the appropriate Service Area account as identified in the Recreation and Open Space Element of the General Plan.
- ~~84.83.~~ The easterly property line of the proposed Lot 2 shall be revised on the Final Tract Map such that the prolongation of the easterly property line directly intersects with the rear property line (i.e. the approximately 82-square-foot notched area illustrated at the northeasterly corner of Lot 2 shall be made a part of Lot 2 and removed from Lot 1).